

Testimony of:

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An Organization Of

AMERICANS FOR **LEGAL** REFORM

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Before:

Howe of Representatives

Committee on Commerce

**Subcommittee on Telecommunications, Trade, and Consumer
Protection**

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Summary of Remarks

HALT is a nonprofit legal reform **organization** funded entirely by **70,000 individual members**, with no support from industries or professional groups. It works for affordable access to civil justice.

HALT's study of contingency **fees finds** that, while **the** system serves the public by permitting injured parties to sue without paying an up-front **retainer** to a lawyer, contingency fees **are** seriously abused by some lawyers., to the detriment of injured **parties** and the general public.

The contingency fee is said to **provide** a lawyer with a **substantial monetary** reward upon winning. to **balance** no **fee** for losing **cases**. But many lawyers **take** no risky cases, and demand from 1/3rd to 1/2 the recovery even for **certain winners that will** never go to trial.

Class action **cases**, useful for **mass disasters** and multiple product **injuries**, are **abused** when lawyers initiate them essentially on **their** own, with plaintiffs **they** never communicate with. and **settle for** enormous **fees** while **class** members get little. and sometimes are worse off from the **settlement**.

The marketplace **does** not work to resolve these problems because **citizens** have little information about the **legal** system, lawyer fees, or **the** chances of winning in a **particular** case.

HALT recommends a marketplace reform, in the **Injured Consumers' Legal Bill of Rights**. This would require **lawyers** in contingency fee cases to **tell** the client. **before taking** the **case**:

- the amount of time **they** expect to spend and their hourly rate
the likelihood of, and the amount of, the expected settlement or award
- the estimated **expenses** involved that **the client will have** to pay
the proposed fee **arrangement**, and the availability of alternative fee arrangements

It would **also** require that contingency fee **lawyers keep** hourly time **records** and **report** **them** to the client. When the case is over, **the** client **has the** option to have **the court** review whether the fee was fair and reasonable.

Testimony

Thank you for the opportunity to address the problem of lawyer's contingency fees. I am **Bill Fry, Executive Director** of HALT - a **legal** reform organization supported by **70,000** individual members from **all** over the **country**. We get no funding from **professions**, companies or **industries**, and we speak solely for the consumers of legal **services**. Our aim is to make **the** legal system more accessible and affordable for **the** average **citizen**. We produce self-help **manuals** and books, study **the legal** system and recommend improvements, and give **direct** services to members and to the public by answering questions about the legal system.

When HALT began studying contingency fees **several** years ago, we did not expect to **find** abuses on such a **scale**. It must have been what the FBI felt in the **1960s** when they discovered **there was, indeed,** a Mafia which **systematically** preyed upon **legitimate** businesses. What **we** found is **that some** lawyers are preying on the public to reap enormous profits, to the detriment of their clients and of tax payers in general. They add large costs to the legal system **the price** of goods, insurance premiums and court expenses.

HALT does not oppose the contingency fee concept, which **permits people with** modest income to bring a tort claim without paying a large retainer up **front**. Nor **is** HALT hostile to **lawyers in general**. Our **staff and** board of directors **include lawyers**. **We** want to help the profession **clean** house. But the power of the plaintiffs bar **within** the profession is such that self-reform by lawyers is not going to occur. **It** is time for congress to **act**.

Our study of contingency **fees** came to four conclusions:

1. Market forces do not work for people who need a lawyer for a **personal** injury claim. Citizens who retain a lawyer for a tort **case**, perhaps **once** in **their** lives, **know**

little about the amount of work the **case will** take, and what **fee** might be appropriate for their **case**. **Lawyers do not**, through their advertising **or** through public **information, educate the** public **about how to** purchase lawyer **services**. Clients of lawyers **are** not informed consumers and can easily **be** bled. Citizens know **more** about a can of **soup** than they do about **their case** when they retain a lawyer.

2. **The risk** of a lawyer losing a **tort** claim has greatly diminished over the past thirty years, and many lawyers **screen** out **the cases** with a risk of losing or **only** a **modest** recovery. Since **1965** the defenses of contributory negligence, assumption of the risk **and** government immunity have **all** but disappeared. Manufacturers of products are subject to **strict** liability, and their **suppliers** and retailers may **also** be liable. The law **has** changed to favor tort claims, yet lawyers have not **reduced** the percentage of **the judgement** that they **take**.

3. On average, over 95 % of **tort** claims are settled. **In** some cases liability is clear and settlement a **certainty, with the** amount being **predicable**. Lawyers take such cases at a full one-third fee or more when **all** that may be needed is a statement of the claim in a **letter**. An example **was** given in 1995 testimony before the Senate **Judiciary** Committee. In a medical **malpractice** case where negligence was not **disputed**, the lawyer **nevertheless** charged 40%, and **took a fee of \$160,000 for** **writing** three letters. Some scholars have documented cases where **plaintiffs'** lawyer **were** paid at an effective rate of **\$25,000 to \$30,000** per hour, and the clients did not **know** it.

4. In class actions, some firms **pursue cases** which **are** of **limited** benefit to the class but yield huge contingency fees for lawyers. **For** bringing stockholder **class actions** some firms **keep a** stable of potential plaintiffs who have **single shares** in **many companies**. One such **person** was a **named** plaintiff in 38 **class** actions. In a **claim** for homeowners who had defective plumbing pipes **installed**, lawyers in just

two slates ~~walked~~ away with \$83.4 million, while homeowners, if they could prove their pipes ~~leaked~~, got an 8% reduction on the ~~cost~~ of ~~replacement~~ pipes.

In mass accidents, or product ~~liabilty~~ class actions such as breast ~~implants~~ and asbestos ~~cases~~, once liability is established the risk of ‘losing’ is over, yet ~~lawyers~~ for individual class ~~members~~ will still ~~take~~ one-third of thousands of settlements, enriching themselves for little ~~work~~.

In short, ~~the marketplace does~~ not work ~~because~~ of lack of consumer information, and the legal profession is unable or unwilling to ~~enforce~~ their ~~paper~~ rules on charging ~~reasonable fees~~ and against ~~solicitation~~ of ~~cases~~.

Many ~~state~~ and ~~federal~~ laws require that foods, drugs, thousands of off-the-shelf products, and many ~~services~~ such as funeral ~~directors~~ provide extensive information and warnings. Yet when people ~~need~~ a lawyer, ~~they~~ often get less information ~~than~~ they do on a can of soup.

We have a simple solution: Require ~~that lawyers tell~~ their ~~potential~~ clients in contingency fee cases the basic ~~information~~ they know but seldom share. This ~~information is:~~

- the amount of time they expect to spend ~~and~~ their ~~hourly~~ rate
- the likelihood of, and the amount of, the expected ~~settlement~~ or award
- the estimated expenses involved that the ~~client~~ will have to Pay
- ~~the proposed~~ fee ~~aranagement~~, and the availability of alternative fee ~~arrangements~~

Based on ~~this~~ information a client is in a position to negotiate ~~the~~ fee, or ~~shop~~ for a ~~better~~ deal. We would also require that contingency fee lawyers ~~keep~~ hourly time records and ~~report~~ them to the client

When the case is ova, we ask ~~that~~ the client ~~have the~~ option to have tie ~~court~~ ~~review whether the~~ fee ~~was~~ fair and reasonable.

Finally, in class actions we would **require that** each class member **signify the** decision to “opt in” rather than being **considered** bound by the settlement unless they **affirmatively** ‘opt out” Consumer should have the right to decide to take their **case alone** if they expect they can do better outside **the class action**, Or **can save on attorney's** fees by doing so.

These are basic **consumer** rights, applicable in most other areas of **commerce** and in the **consumer** world, but which have not been applied to legal services.

Anyone who has seen the **efforts**, over **several** decades, to reform the contingency **fee system** and **the** tort system in **general knows** the **force** of lawyer opposition. The **trial lawyers** are said to **be** the **most powerful** lobby in the **country**. One **virtue** of our proposal is that it is hard **to oppose**. It requires **more information** to be given to consumers. **requires record** keeping by lawyers, and gives a **judicial** forum where fee complaints can be **heard**. Yet these simple rules will empower consumers and the marketplace to bring about more fair and **reasonable** fees without legislating what those **fees** should be. **Congress** should **require lawyers** to **do what** other business must do - give basic **information** to **consumers** about **what they** are **purchasing** and how much it **will cost**.